

## REMARKS

This Amendment is submitted in reply to the non-final Office Action dated February 5, 2008. No fee is due in connection with this Amendment. The Director is authorized to charge any additional fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 115808-365 on the account statement.

Claims 1, 3-4, 6, 8, 10-11, 14, 16, 18 and 63-64 are pending in this application. Claims 2, 5, 7, 9, 12-13, 15, 17 and 19-22 were previously canceled. Claims 23-62 were previously withdrawn. In the Office Action, Claims 1, 3-4, 6, 8, 10-11, 14, 16, 18 and 63-64 are rejected under 35 U.S.C. §103. In response, Claim 18 has been canceled and Claims 1, 11 and 63 have been amended. In view of the amendments and/or for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claims 1, 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,200,594 to Ernest et al. ("*Ernest*"). Claims 1, 3, 8, 10-11, 16, 18 and 63-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,905,089 to Hwang et al. ("*Hwang*"). Claims 4, 6 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Ernest* and *Hwang* and further in view of U.S. Patent 5,645,534 to Hermand ("*Hermand*"). In view of the amendments, and for at least the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

Currently amended independent Claims 1 and 11 require, in part, a thermally extruded plant material that includes one or more phytochemical agents capable of inhibiting at least one of enzymatic and transcriptional activity to inhibit inflammation in a mammal. Similarly, independent Claim 63 requires, in part, a thermally extruded plant material, the active fragment including  $\alpha$ -methylene- $\gamma$ -butyrolactone, wherein the active fragment in an effective amount is capable of inhibiting at least one of enzyme and transcriptional activity to inhibit inflammation. The amendments do not add new matter. The amendments are supported in the specification at, for example, page 3, lines 5, 11, 22; page 7, lines 15-19. In contrast, Applicants respectfully submit that the cited references are deficient with respect to the present claims.

With respect to the present invention, Applicants have surprisingly discovered that upon thermal extrusion certain plants and/or plant extracts thereof can be generated with enhanced

inhibition of enzyme activity and/or transcription activity in mammals which is believed to reduce the risk of inflammation. See, specification, page 5, lines 23-30. Thus, structurally the present claims require, in part, a plant material thermally extruded to inhibit at least one of enzymatic and transcriptional activity to treat inflammation. These are significant structural advantages, considering that the inflammation inhibiting nature of thermally extruded plant material of the present claims is a unique aspect of the invention. In contrast to the present invention, Applicants respectfully submit that there exists no reason why the skilled artisan would combine the cited references to obtain the present claims, and even if combinable, all of the claimed elements are not taught or suggested by the cited references.

Applicants respectfully submit that the skilled artisan would have no reason to combine the cited references to obtain the present claims because the cited references teach away from each other and the claimed invention. For example, *Ernest* is entirely directed toward topical and oral herbal compositions that can be used to enhance breasts in human females by strengthening connective tissues and encouraging the growth of new cells. See, *Ernest*, Abstract. In addition, *Hwang* discloses sesquiterpene lactones obtained from plant material. See, *Hwang*, Abstract.

*Hermand* discloses extraction at low temperatures because low temperatures allow good preservation of the resulting extract without the addition of preservative. See, *Hermand*, col. 1, lines 56-60. *Hermand* also discloses avoiding thermal degradation of the chicory which might possibly denature the active compounds. See, *Hermand*, col. 1, lines 60-63. Furthermore, *Hermand* discloses that chicory extract obtained by hot extraction has all the known properties of chicory extract obtained by cold extraction. See, *Hermand*, col. 2, lines 38-42. Thus, one skilled in the art would have no reason to thermally extrude the plant material of *Hermand* or to combine *Hermand* with the remaining cited references to obtain the present claims. Moreover, *Ernest* and *Hwang* fail to disclose a reason to combine *Hermand* with thermal extruding to achieve the present invention.

Consequently, *Hermand's* hot extracted chicory extract, having the same properties as cold extracted chicory extract, is readily distinguishable and also teaches away from the claimed invention. In fact, "a prima facie case of obviousness can be rebutted if the applicant . . . can show that the art in any material respect 'taught away' from the claimed invention . . . a reference may be said to teach away when a person of ordinary skill, upon reading the reference . . . would

be led in a direction divergent from the path that was taken by the applicant." *In re Haruna*, 249 F.3d 1327, 58 USPQ 2d 1517 (Fed. Cir. 2001). See, also, MPEP 1504.03.

Applicants respectfully submit that the claims must be viewed as a whole as defined by the claimed invention and not dissected into discrete elements to be analyzed in isolation. *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1548 (Fed. Cir. 1983); *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995). Moreover, Applicants also respectfully submit that the Patent Office is trying to combine cited references that have completely different objectives without any specific reason to do so other than a hindsight attempt to arrive at the Applicants' claimed invention, which the Federal Circuit has found time and again to be clearly improper.

However, even if combinable, Applicants also respectfully submit that the cited references fail to disclose each and every limitation of the presently claimed subject matter. For example, *Ernest*, *Hwang* and *Hermand* all fail to disclose or suggest thermally extruding a plant material as is required, in part, by independent Claims 1, 11 and 63. Moreover, *Hwang* and *Hermand* fail to disclose any thermal processing of a plant material, let alone thermally extruding a plant material. The Patent Office even admits same. See, Office Action, page 4, lines 16-18; page 5, lines 2-3.

For at least the reasons discussed above, the skilled artisan would have no reason to combine *Ernest*, *Hermand* and *Hwang* to arrive at the present claims and, even if combinable, the cited references fail to disclose each and every element of the present claims. As such, Applicants respectfully submit that the combination of *Ernest* in view of *Hermand* and *Hwang* is improper.

Accordingly, Applicants respectfully request that the obviousness rejection with respect to Claims 1, 3-4, 6, 8, 10-11, 14, 16, 18 and 63-64 be reconsidered and withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

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